

EXHIBIT 32

A.D. #

Defendant.

Recording Operator, L. Ostapeck

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I N D E X

The Verdict

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1 THE COURT: All right, for the record there is a
2 couple of questions that the jury has presented.

3 First is -- question number one, they ask the
4 difference between kidnapping and criminal restraint. "What
5 elements must prosecution prove?" I assume that's for both of
6 them. I'll re-read that portion.

7 And then they ask for the difference between murder
8 and aggravated manslaughter, "What elements must the
9 prosecution prove?"

10 Question number three, "What evidence was presented
11 that showed a gun was present at the Polites house?" And then
12 they asked for a break before we answer the questions which I
13 gave them.

14 Any -- any comments, counsels?

15 MS. BAGLIVI: Judge, I know we had discussed in
16 chambers the -- the -- the issue of the gun and I had indicated
17 that it was in the stenographic statement that Lieutenant Kane
18 gave. It is also in the oral statement that Senior
19 Investigator Terrance Alver testified to, the fact that there
20 were guns at the Polites home that night.

21 THE COURT: Any objection to explaining the
22 difference between murder -- I'm going to read the murder
23 definition from the statute and aggravated definition from the
24 statute and then read the charges again on those two issues.

25 MR. WEICHSEL: No, judge.

1 MS. BAGLIVI: No objection, Your Honor.

2 THE COURT: And they're not asking for reckless
3 manslaughter, but I might have to go into that too I think.

4 MR. WEICHSEL: Yeah, I would think if you're going to
5 --

6 THE COURT: If we're going to give those two although
7 they aren't asking for it.

8 MS. BAGLIVI: They -- they -- they say murder and
9 aggravated manslaughter though, and it's on their verdict sheet
10 three different ways, so they would have known the name of the
11 third one if they wanted it.

12 MR. WEICHSEL: Well I --

13 THE COURT: I know. You're objecting and you're
14 saying go ahead and I'm going to decide, that's why I'm here.
15 All right. And the kidnapping and the restraint I'll do the
16 same.

17 Now with regard to the third question, "What evidence
18 was presented that showed a -- a gun was presented at the
19 Politics house?" Do you have any comments, Mr. Weichsel, on
20 that?

21 MR. WEICHSEL: Judge, I -- I think what you can tell
22 the jury is that they must rely on their own recollection, they
23 are the triers of the facts and you can advise the jury that if
24 they want certain -- any testimony read back that is available
25 to them, without pointing out any testimony.

1 THE COURT: Well the only -- the only testimony in
2 the case was -- as to what happened in the Polites house -- see
3 it's different from the Hippman robbery because Mr. Hippman
4 came in and testified and they had some direct evidence from
5 him as to what occurred in the apartment. The only evidence
6 that we have, that has been presented as to what happened at
7 the Polites house is from the statement of the defendant. So
8 if whatever evidence there is as to whether there's a gun or
9 not, it's either in that statement or it's not.

10 MR. WEICHSEL: Yeah, I'm wondering if just --

11 THE COURT: So I'm inclined to open the door to the
12 jury and let them know. And in fact, on their verdict -- on
13 their question sheet here they have what they need crossed out
14 because maybe someone had come to the conclusion, which I did
15 instruct them, that there -- there was a statement made by the
16 defendant which will not be available to them in the jury room.
17 Now that may have been misleading, the written statement is not
18 available. And the reason for that is obvious for two reasons;
19 first of all it's -- it's cumulative, it's been read on the
20 record. Secondly, there are portions of that particular
21 statement which refer to another crime but we had to delete --

22 MS. BAGLIVI: Other crimes.

23 THE COURT: -- and make sure the jury -- in fact when
24 Officer Kane or Lieutenant Kane read it in the -- in the trial
25 itself to the jury we had already excised it from -- those

1 portions. So those are the reasons really that they don't have
2 the statement available to them however, I -- I do feel
3 compelled to let them know that that statement is available to
4 be read back to them from the -- from the record, if they want
5 it -- if they want it.

6 MS. BAGLIVI: Judge, I would also ask that you tell
7 them -- I mean unless Mr. Weichsel is disputing the fact that
8 it's in the statement or that it was in the oral statement, I
9 don't think there's anything wrong with telling them that it
10 was in both statements and if they want them read back that's
11 up to them.

12 THE COURT: No, I'm not telling them what was in both
13 statements because then I'm telling them what the evidence is
14 and I'm not going to do that. That's their -- that's their --
15 that's their purview, I mean that's their world that they have
16 to dig it out. But what I do know is that whatever happened in
17 that particular apartment that we know of comes from this
18 defendant in that statement that she made. And there -- if we
19 go back to the oral statement which was testified to by Alver -
20 -

21 MR. WEICHSEL: Detective Alver.

22 THE COURT: Alver. There's a lot of other exten --
23 extenuating circumstances he talked about too which I think
24 would be too -- too cumbersome to try to edit out. But the
25 statement itself, and we just reviewed it downstairs of the

1 tape, is that that statement, the first portion of that
2 statement has to do with the Hippman robbery. Then the jury
3 took a break and I called for a break at that time.

4 MS. BAGLIVI: Right.

5 THE COURT: And when we came back then the statement
6 continued with regard to the Polites incident --

7 MR. WEICHSEL: Judge --

8 THE COURT: -- and that's where -- that's where I --
9 I intend to -- if they want it read back that's where I would
10 start it from, so it's about 30 pages.

11 MR. WEICHSEL: Yeah, I'm wondering if the import of
12 that question is, is there any other evidence other than her
13 statement that there were guns present?

14 MS. BAGLIVI: It doesn't --

15 THE COURT: Well --

16 MS. BAGLIVI: It doesn't say that.

17 MR. WEICHSEL: I understand.

18 THE COURT: We have people there and the question is
19 clearly, "What evidence was presented that showed a gun was
20 present at Polites' house?" And I cannot tell them what
21 evidence was presented.

22 MR. WEICHSEL: No, that's fine.

23 THE COURT: I can tell them this is the evidence of
24 what happened at Polites' house and we get it only from -- in
25 this case, only from the statement of the defendant. Nobody

1 else was -- testified as to who was there that night. In fact
2 the body was discovered days later, so.

3 All right, bring the jury up please.

4 (PAUSE - THE JURY ENTERS THE COURTROOM)

5 THE COURT: We have alternates too, are they? Yeah.

6 (PAUSE)

7 THE COURT: Good morning, ladies and gentlemen.

8 THE JURORS: Good morning, judge.

9 THE COURT: Good morning. I didn't see the
10 alternates. I knew you were here, I saw you at a distance and
11 -- but I did see the jury this morning and in fact I also am
12 going to instruct the attorneys that I did make inquiry of the
13 jurors when they arrived this morning before they started, had
14 they read anything in the newspapers pertaining to this case
15 and the response was negative, they had not. They are aware
16 that there was an article in today's paper however, they did
17 not read it.

18 I have a couple of questions that the jury has
19 presented. I'll read them to you so if there is any difference
20 in your mind as to what these questions are or what you
21 presented just wave your hand, don't yell out, just wave your
22 hand.

23 The first question is the different between
24 kidnapping and criminal restraint. "What elements must
25 prosecution prove?"

1 The question is the difference between murder and
2 aggravated manslaughter, "What elements must the prosecution
3 prove?".

4 And the third question is, "What evidence was
5 presented that show a gun was present at the Polites house?"

6 Those are the three questions, correct?

7 Now I can read to you and I'll explain basically the
8 difference between the crimes which you suggest. With regard
9 to the last question, "What evidence was presented that showed
10 a gun was present at Polites' house?" Now I have to instruct
11 you that you have to rely upon your own recollection as to what
12 the testimony was and what the evidence was, okay? It's not --
13 it's not appropriate for -- and I do appre -- I want to -- if I
14 ever make reference to any evidence it's your recollection that
15 counts and not mine.

16 There is a section here in this question -- I don't
17 know if you all -- this is written by the foreperson I assume?

18 THE JURY FOREPERSON: Yes.

19 THE COURT: And it's crossed out. It says, "Jamie
20 Farthing's steno statement regarding Polites' crime from the
21 time they got into..." and then it stops, and then it's crossed
22 out. Well I did instruct you that that particular written
23 statement that we referred to during the trial was not marked
24 into evidence.

25 A JUROR: (Inaudible).

1 THE COURT: No questions; no, we don't have a
2 colloquy here. Colloquies are like this; you make a -- you ask
3 a question, I discuss it with the attorneys, then I give you my
4 answers, all right?

5 Now, and that's -- I assume that that's the reason
6 that it's crossed out, because someone probably amongst you
7 realized that the steno statement was not available to you.
8 However, with that in mind, I also must inform you that the
9 statement that was made was read to you from the witness box.
10 That testimony is available to you. We can read it -- we can
11 run it back for you if you want, but you have to let me know if
12 you want that, okay? So that particular portion of the -- of
13 the statement which was read by Lieutenant Kane I believe it
14 was, that would be available to you if you want to hear that,
15 okay? But you let me know; you decide that when you go back
16 and let me know.

17 First I'll answer the first two questions. The
18 kidnapping and criminal restraint, you asked for the
19 difference, all right? What I'm going to do is I'm going to
20 read to you the statute of what kidnapping is, all right? And
21 then I'll also read to you what the law says about criminal
22 restraint. In fact I'll even give you the exact statute. It's
23 2C:13-2A is the statute of criminal restraint. I'll read you
24 the definition of the kidnapping statute that's pertinent to
25 this case. Let me just -- all right.

1 "A person is guilty of kidnapping if he unlawfully
2 confines another for a substantial period with any of the
3 following purposes." Or for any of the following purposes, all
4 right? He's guilty of kidnapping if he unlawfully confines
5 another for a substantial period for any one of these two
6 following purposes. "One, in order to facilitate the
7 commission of any crime or flight thereafter, or to inflict
8 bodily injury on or to terrorize the victim or another."
9 That's kidnapping, all right?

10 Now criminal restraint, "A person commits the crime
11 of criminal restraint if he restrains another unlawfully in
12 circumstances exposing the other to a risk of serious injury or
13 holds another in a condition of involuntary servitude." And
14 that's criminal restraint. Criminal restraint is that he
15 commits the crime -- that crime if he restrains another
16 unlawfully in circumstances exposing the other to serious -- to
17 a risk of serious bodily injury or -- or he holds another in a
18 condition of involuntary servitude.

19 All right, now I'll give you the -- what has to be
20 proved. Now with regard to the kidnapping, as I said a person
21 is guilty of kidnapping if he unlawfully confines another for a
22 substantial period with -- with the following purpose -- any of
23 the following purposes. One, to facilitate the commission of
24 any crime or flight after the crime or -- or to inflict bodily
25 injury on or to terrorize the victim or another. In order to -

1 - for you to find the defendant guilty of kidnapping the State
2 is required to prove each of the following elements to you
3 beyond a reasonable doubt. One, that the defendant, Jamie
4 Farthing, unlawfully confined Jamie Polites and/or Robert
5 Hippman -- Hippman. This applies to both of those counts,
6 that's one and eight, charges. That he -- that she confined --
7 unlawfully confined them for a substantial period; two, that
8 the confinement was with the purpose to facilitate the
9 commission of any crime or flight thereafter; or to inflict
10 bodily injury or to terrorize the victim. If confinement was
11 for the purpose to terrorize the victim, either one of those
12 two are number two.

13 In relation to the first you will note that I have
14 used the term "unlawfully confined." A confinement is unlawful
15 if it is accomplished by force, threat or deception. Unlawful
16 confinement must be for a substantial period however, for this
17 purpose a substantial period is not measured in seconds,
18 minutes or hours nor by any other standard based strictly on
19 the passage of time. Rather, a substantial period is one that
20 is significant in that it is more than incidental to the
21 underlying crime and substantially increases the risk of harm
22 to the victim. That increased risk of harm must not be
23 trivial. If the victim is confined by only a slight period --
24 for only a slight period of time and such confinement does not
25 create the isolation and increased risk of harm that are at the

1 heart of the kidnapping statute then you should not convict the
2 defendant of kidnapping -- of the kidnapping charge. Therefore,
3 in determining whether the confinement was substantial you must
4 consider one, the duration of the confinement; two, whether the
5 confinement occurred during the commission of a separate
6 offense; three, whether the confinement which occurred is
7 inherent in the separate defense, and whether the confinement
8 created a significant danger to the victim independent of that
9 posed by the separate offense.

10 The second element the State is required to prove is
11 that the confinement was with the purpose to facilitate the
12 commission of any crime or flight thereafter. I have told you
13 that to constitute kidnapping, an unlawful -- an unlawful
14 removal or confinement must have been with a specific purpose.
15 Therefore, I must define purpose for you. Again, a person acts
16 purposely with respect to the nature of her conduct or the
17 result thereof if it is her conscience object to engage in
18 conduct of that nature to cause such a result, that is if the
19 person means to do what she does or to cause such a result. A
20 person acts purposely with respect to the attendant
21 circumstances if the person is aware of the existence of such
22 circumstances or believes or hopes that they exist. With
23 purpose, design or -- or with design or equivalent terms have
24 the same meaning.

25 Now the nature of the purpose with which the

1 defendant acted toward the victim is a question of fact for the
2 jury to decide. Again, purpose is a condition of the mind
3 which cannot be seen and can only be determine by reference or
4 by inference drawn from the defendant's conduct from words or
5 acts as they have been presented in this -- in the evidence.
6 Now you have heard and seen in this case -- as you have heard
7 and seen in this case, it is not necessary that the State
8 produce a witness or witnesses to testify that the defendant
9 stated for example that her purpose in confining Jamie Polites
10 and/or Robert Hippman was to facilitate the commission of any
11 crime or flight thereafter. That is, in to aid or in
12 committing a crime or fleeing afterwards. It is within the
13 power of the jury to find that the proof of purpose has been
14 furnished beyond a reasonable doubt by inferences which you may
15 draw from the nature of the acts and the circumstances
16 surrounding the conduct under investigation as they have been
17 presented in the evidence you have heard and seen in this case.

18 And then I -- I mention to you a section of our
19 statute provides that kidnapping is a crime of the first degree
20 except that it is a crime of the second degree if the kidnapper
21 releases the victim unharmed and in a place -- and in a safe
22 place prior to apprehension.

23 Now in this case the State alleges that the defendant
24 did not release the victim -- victims, either one of them --
25 unharmed and in a place safe prior to her apprehension. The

1 burden of proof is on the State to prove beyond a reasonable
2 doubt that the victim was either harmed or -- either harmed or
3 not released in a safe place prior to defendant's apprehension.
4 Unless you find that the State has carried this burden you must
5 find the defendant not guilty of kidnapping in the first
6 degree. Therefore, if you find that the State has not proven
7 to you beyond a reasonable doubt each and every element of the
8 crime of kidnapping as I have defined that crime to you then
9 you must find the defendant not guilty. If you find the
10 defendant has -- I'm sorry -- if you find that the State has
11 proven to you beyond a reasonable doubt that the defendant
12 committed the crime of kidnapping as I have defined that crime
13 to you but the State has not convinced you beyond a reasonable
14 doubt that the victim was either harmed or not released in a
15 safe place prior to the defendant's apprehension then you must
16 find the defendant guilty of kidnapping in the second degree.

17 Now if you find beyond a reasonable doubt that the
18 defendant committed the crime of kidnapping and that she harmed
19 the victim or did not release the victim in a safe place prior
20 to the defendant's apprehension then you must find the
21 defendant guilty of kidnapping in the first degree. And as I
22 said, those particular questions are taken care of in the
23 verdict sheet by answering the yes or no questions if you find
24 him guilty of kidnapping.

25 Now if you find the defendant not guilty of

1 kidnapping at all, in any way, then you must consider the crime
2 of criminal restraint, that's the less included charge in the
3 kidnapping -- in the kidnapping -- in kidnapping, is the
4 criminal restraint.

5 The statute reads that "A person is guilty of
6 criminal restraint if he knowingly restrains another person
7 unlawfully in circumstances exposing the other person to risk
8 of serious bodily injury."

9 Now in order for you to find the defendant, Jamie
10 Farthing, guilty of this offense the State has to prove the
11 essential elements of this offense to you beyond a reasonable
12 doubt. And these elements are first -- first of all, that the
13 defendant, Jamie Farthing, knowingly restrained Jamie Polites
14 and/or Robert Hippman; and two, that the restraint was known by
15 the defendant to be unlawful; and three, the restraint was
16 under such circumstances which exposed Jamie Polites and/or
17 Robert Hippman to serious bodily injury.

18 Now, I've used the term restraint -- or the terms
19 restraint, knowingly, lawfully and serious bodily injury. The
20 word restraint means confinement or limitation or abridgement.
21 Restraint involves hinderance, confinement or restriction of
22 liberty. If a person acts knowingly with respect to the nature
23 of his conduct or the attendant circumstances, if he is aware
24 that his conduct is of that nature or that such circumstances
25 exist or is aware of the high probability of their existence, a

1 person acts purposely then.

2 A person acts knowingly with respect to the result of
3 his conduct if he is aware that it is practically certain that
4 his conduct would cause such a result; knowing with knowledge
5 or -- or equivalent terms that have the same meaning.

6 Now I have used the terms unlawful. Unlawful means
7 to accomplish the restraint by force, threat or deception.

8 The term serious bodily injuries mean bodily injuries
9 which create a substantial risk of death or which causes
10 serious permanent disfigurement or protractive loss or
11 impairment of the functions of any bodily member or organ.

12 Now if after a consideration of all of the evidence
13 you are convinced beyond a reasonable doubt that the defendant
14 did knowingly, unlawfully restrain Jamie Polites and/or Robert
15 Hippman, and that such restraint exposed Jamie Polites and/or
16 Robert Hippman to the risk of serious bodily injury then your
17 verdict should be guilty. If however, after considering all
18 the evidence you find that the State has failed to prove each
19 and every element of the offense charged beyond a reasonable
20 doubt then your verdict must be not guilty.

21 And again, you are considering criminal restraint if
22 you find him not -- if you find the defendant not guilty of
23 kidnapping, then you consider criminal restraint, all right?

24 All right, now murder and aggravated manslaughter.
25 I'll give you the definitions of each of those and then we'll

1 go back into what the State has to prove.

2 All right, here's the definitions. I'm going to give
3 you the definitions of murder, of aggravated manslaughter and
4 also reckless manslaughter, all three of the murder and lesser
5 included offenses of aggravated manslaughter and reckless
6 manslaughter.

7 Murder is defined in the statute as, "A person is
8 guilty of murder if he or she purposely causes the death or
9 serious bodily injury resulting in death or knowingly causes
10 death or serious bodily injury resulting in death." So it's
11 the person is guilty of murder if he purposely or knowingly,
12 either one, purposely or knowingly causes death or serious
13 bodily injury resulting in death; that's the definition.

14 The definition of aggravated manslaughter -- "A
15 person is guilty of aggravated manslaughter if he or she
16 recklessly causes the death of another under circumstances
17 manifesting extreme indifference to human life."

18 Reckless manslaughter -- "A person is guilty of
19 reckless manslaughter if he or she recklessly causes the death
20 of another person."

21 There's three different definitions. For murder,
22 when a person would be found guilty of purposely or knowingly
23 causing the death or serious bodily injury resulting in death
24 the State has to prove beyond a reasonable doubt, and in this
25 case we're talking about James Polites, they'd have to prove

1 beyond a reasonable doubt one, that the defendant caused James
2 Polites' death or serious bodily injury resulting in Mr.
3 Polites' death; number two, that the defendant did so purposely
4 or knowingly.

5 Now a person who causes another's death does to
6 purposely when it is that person's conscious object to cause
7 death or serious bodily injury resulting in death. A person
8 who causes another's death does so knowingly when the person is
9 aware that it is practically certain that his or her conduct
10 will cause death or serious bodily injury resulting in death.

11 The nature of the purpose of knowledge -- the nature
12 of the purpose or knowledge with which the defendant acted
13 toward James Polites is a question of fact for you, the jury,
14 to decide. Again, purpose and knowledge are conditions of the
15 mind which cannot be seen and can only be determined by
16 inferences from conduct, words and acts. It's not necessary
17 for the State to produce a witness or witness who could testify
18 that the defendant stated for example, that he or she or her
19 purpose or his purpose was to cause death or serious bodily
20 injury resulting in death, or that he or she knew that his or
21 her conduct would cause death or serious bodily injury
22 resulting in death. It is within your power to find that proof
23 of purpose or knowledge that was furnished -- that was
24 furnished beyond a reasonable doubt by inferences which may
25 arise from the nature of the acts and surrounding

1 circumstances. Such things as the place where the acts
2 occurred, the weapon used, the location, the number and nature
3 of wounds inflicted, and all that was done or said by the
4 defendant proceeding, connected with and immediately succeeding
5 the events leading to the death of James Polites are among the
6 circumstances to be considered.

7 Although the State must prove that the defendant
8 acted either purposely or knowingly the State is not required
9 to prove a motive. If the State has proved the essential
10 elements of the offense beyond a reasonable doubt the -- the
11 defendant must be found guilty of that offense regardless of
12 the defendant's motive or lack of motive. Now if the State
13 however, has proved a motive you may consider it insofar as it
14 gives meaning to other circumstances. And on the other hand,
15 you may consider the absence of motive in weighing whether or
16 not the defendant is guilty of the crime charged.

17 Now the other element that the State must prove
18 beyond a reasonable doubt is that the defendant caused James
19 Polites' death or caused serious bodily injury resulting in his
20 death. Again, I gave you the definition; serious bodily injury
21 mean bodily injury which creates a substantial risk of death or
22 which causes serious permanent disfigurement or protracted loss
23 or impairment of the function of any bodily member or organ.

24 When the killing is committed purposely or knowingly
25 causing death or serious bodily injury resulting in death it

1 must be within the design or the contemplation of the
2 defendant. Whether the killing is committed purposely or
3 knowingly causing death or serious bodily injury resulting in
4 death must be within the design of contemplation of the
5 defendant.

6 So if you determine that the State has proven beyond
7 a reasonable doubt that the defendant purposely or knowingly
8 caused death or serious bodily injury resulting in death you
9 must find the defendant guilty of murder. On the other hand,
10 if you determine that the State has not proven beyond a
11 reasonable doubt that the defendant purposely or knowingly
12 caused the death or serious bodily injury resulting in death
13 then you must find her not guilty of murder and go on to
14 consider whether the defendant should be convicted of the
15 crimes of aggravated or reckless manslaughter. And as I said
16 to you, a person is guilty of aggravated manslaughter if she
17 recklessly causes the death of another or under circumstances
18 manifesting extreme indifference to human life.

19 In order for you to find the defendant guilty of
20 aggravated manslaughter the State is required to prove each of
21 the following elements beyond a reasonable doubt; one, that the
22 defendant caused James Polites' death; and two, that the
23 defendant did so recklessly; and three, that the defendant did
24 so under circumstances manifesting extreme indifference to
25 human life.

1 Now one element the State must prove beyond a
2 reasonable doubt is that the defendant acted recklessly. A
3 person who causes another's death does so recklessly when he or
4 she is aware of and consciously disregards a substantial and
5 unjustifiable risk that death will result from his or her
6 conduct. The risk must be of such a nature and degree that
7 considering the nature and the purpose of the defendant's
8 conduct and the circumstances known to the defendant, his or
9 her disregard of that risk is a gross deviation from the
10 standard of conduct that a reasonable person would follow in
11 the same situation. In other words, you must find that the
12 defendant was aware of and consciously disregarded the risk of
13 causing death. And if you find that the defendant was aware of
14 and disregarded the risk of causing death you must determine
15 whether the risk that she disregarded was substantial and
16 unjustifiable. In doing so you must consider the nature and
17 the purpose of the defendant's conduct and the circumstances
18 known to the defendant. And you must determine whether in
19 light of those circumstances -- of those factors the defendant's
20 disregard of that risk was a -- a gross deviation from the
21 conduct of -- a reasonable person would have observed in the
22 defendant's situation.

23 Now another element that the State must prove beyond
24 a reasonable doubt is that the defendant acted under
25 circumstances manifesting extreme indifference to human life.

1 The phrase "under circumstances manifesting extreme
2 indifference to human life" does not focus on a defendant's
3 state of mind, but rather on the circumstances under which you
4 find she acted. If in light of all the evidence you find that
5 the defendant's conduct resulted in a probability as opposed to
6 a mere possibility of death then you may find that she acted
7 under circumstances manifesting extreme indifference to -- to
8 human life. On the other hand if you find that her conduct
9 resulted in only a possibility of death then you must acquit
10 her of aggravated manslaughter and consider the offense of
11 reckless manslaughter, which I will explain to you in a moment,
12 shortly.

13 The final element in aggravated manslaughter that the
14 State must prove beyond a reasonable doubt is that the
15 defendant caused Jamie Polites' death. Now you must find that
16 Jamie Polites would not have died but for the defendant's
17 conduct.

18 If after consideration of all of the evidence you are
19 convinced beyond a reasonable doubt that the defendant
20 recklessly caused Jamie Polites' death under circumstances
21 manifesting extreme indifference to human life then your
22 verdict should be guilty of aggravated manslaughter. If
23 however, your -- after consideration of all the evidence you
24 are not convinced beyond a reasonable doubt that the defendant
25 recklessly caused Mr. Polites' death under circumstances

1 manifesting extreme indifference to human life you must find
2 the defendant not guilty of aggravated manslaughter and go on
3 and consider whether the defendant should be convicted of
4 reckless manslaughter.

5 The definition of reckless manslaughter is, "A person
6 is guilty of reckless manslaughter if he or she recklessly
7 causes the death of another person." The State must prove
8 beyond a reasonable doubt the following elements. There are
9 two; must prove that the defendant caused Jamie Polites' death,
10 and two, that the defendant did so recklessly. The State must
11 prove beyond a reasonable doubt that the defendant acted
12 recklessly.

13 Now I already gave you the definition of reckless,
14 I'll give it to you again. "A person who causes another's
15 death does so recklessly when he or she is aware of and
16 consciously disregards a substantial and justifiable risk that
17 death will result from her conduct. The risk must be of such a
18 nature and degree that considering the nature and purpose of
19 the defendant's conduct and the circumstances known to the
20 defendant her disregard of that risk is a gross deviation from
21 the standard of conduct that a reasonable person would follow
22 in the same situation." In other words, you must find that the
23 defendant was aware of and consciously disregarded the risk of
24 causing death. If you find that the defendant was aware of and
25 disregarded the risk of causing death you must determine

1 whether that risk that she disregarded was substantial and
2 unjustifiable. In doing so you must consider the nature and
3 purpose of the defendant's conduct and the circumstances known
4 to the defendant. And you must determine whether in light of
5 those factors the defendant's disregard of that risk was a
6 gross deviation from the conduct a reasonable person would have
7 observed in the defendant's situation.

8 The other element that the State must prove beyond a
9 reasonable doubt for reckless manslaughter is that the
10 defendant caused Mr. Polites' death. You must find that Mr.
11 Jamie Polites would not have died but for the defendant's
12 conduct. If after the consideration of all of the evidence you
13 are convinced beyond a reasonable doubt that the defendant
14 recklessly caused Mr. Polites' death then your verdict should
15 be guilty of reckless manslaughter and however, after
16 consideration if all the evidence -- of all the evidence you
17 are not convinced beyond a reasonable doubt that the defendant
18 reck -- recklessly caused Mr. Polites' death you must find the
19 defendant not guilty of reckless manslaughter.

20 All right, that's the law on the questions that you
21 asked, ladies and gentlemen of the jury. With regard to that
22 last question, as I said, you are to rely upon your own
23 recollection of the testimony. If you would like a read back
24 of that portion of the testimony of Lieutenant Kane wherein he
25 sets forth the -- the statement given by the defendant that

1 would be available to you. You go back to the jury room, you
2 decide that; just send a note out and let me know if you want
3 it and we'll have it ready for you.

4 MS. BAGLIVI: Judge, before --

5 MR. WEICHSEL: Judge, one second.

6 MS. BAGLIVI: Can approach?

7 THE COURT: All right, just one second.

8 (SIDEBAR)

9 THE COURT: I'm sorry.

10 MR. WEICHSEL: That's all right.

11 MS. BAGLIVI: Judge, I'm sorry, this is my fault, I
12 should have told you I should request -- I would request that
13 you charge accomplice liability because murder and -- and
14 aggravated manslaughter and manslaughter all talk about
15 defendant causing and the theory of the State's case has always
16 been accomplice liability especially in light of the Cook case
17 because that was the exact same situation there. I would ask
18 that you just remind them about accomplice liability and give
19 them a charge on that. It goes hand and hand with the --

20 THE COURT: Why don't -- the whole charge --

21 MR. WEICHSEL: Well I think -- I think what I was
22 going to ask the court to do is just to (inaudible) the jurors
23 that the charge that you gave them today has to be given in the
24 context of your entire charge.

25 THE COURT: Yeah, I think I'm going to make reference

1 to that. I don't --

2 MS. BAGLIVI: But then what about just telling them
3 don't forget that the State's theory is accomplice --

4 THE COURT: Yeah.

5 MS. BAGLIVI: Okay.

6 MR. WEICHSEL: Judge --

7 THE COURT: And in the meantime (inaudible)
8 accomplice liability.

9 MS. BAGLIVI: Right.

10 MR. WEICHSEL: I'm just -- the entire, you know,
11 burden of proof -- you know -- okay.

12 (END OF SIDEBAR)

13 THE COURT: Now, ladies and gentlemen, I have to
14 remind you also that the -- what I've just read to you as part
15 of the charges has to be taken in the context of the entire
16 charge that I gave you -- that I gave you yesterday. And I
17 also remind you of the State's theory of accomplice liability
18 and -- which is the underlying charge to -- to every one of the
19 charges that has been presented by the State, they have a
20 theory of accomplice liability permeating through that as I
21 read to you yesterday. And if there's any question in your
22 mind about the accomplice liability issue just let me know that
23 too and I'll -- I'll review that for you, all right? And
24 remember again, the whole context of my -- of my charge, the
25 presumption of innocence, the burden of proof is on the State

1 and everything, the guilt or -- must be found beyond a
2 reasonable doubt if she's found guilty.

3 All right, let me know if you want that read back,
4 that portion of the testimony, all right? Go ahead back down.

5 (PAUSE - THE JURY LEAVES THE COURTROOM)

6 MS. BAGLIVI: Should we stay around for a few minutes
7 to see?

8 THE COURT: Yeah, let's see if they ask. They're
9 either going to tell us right away or not.

10 MS. BAGLIVI: Okay.

11 MR. WEICHSEL: Judge, I've got a client waiting at
12 the office. I'd like -- if they're not going to ask the
13 question I'd like to run back.

14 THE COURT: I know you would.

15 (OFF THE RECORD/ON THE RECORD)

16 THE COURT: All right, bring the jury up please?

17 (PAUSE - THE JURY ENTERS THE COURTROOM)

18 THE COURT: All right, ladies and gentlemen, I have
19 another question. You're asking for accomplice liability, it
20 needs to be explained again. You said, "Can we break now?"
21 The answer is no. Testimony -- you're asking for testimony,
22 "Need to review Lieutenant Kane's testimony surrounding the
23 Polites crimes and the steno statement of Jamie Farthing." Now
24 I have that ready but I'm not going to run it now, I'm going to
25 run it after we break. I'll give you a break after the -- I'm

1 going to give you accomplice liability now and then break and
2 then after lunch, which isn't here yet. You see, that's the
3 break, is lunch, it's not going out.

4 The number two question is you need to review the
5 entire testimony of Eddie Kummer, the boyfriend, including the
6 cross and redirect and we're having that prepared now too. But
7 I'll give you accomplice liability now and the alternates are
8 going to be coming in so I'll --.

9 MR. WEICHSEL: Judge, you're going to have to repeat
10 this for the alternates?

11 THE COURT: No. They're here for my instructions.

12 MR. WEICHSEL: Okay.

13 THE COURT: All right, there's a request for the
14 accomplice liability charge. Now accomplice liability, when a
15 defendant is charged as an accomplice -- let me make sure I
16 have the pages correct -- and it the jury is instructed as to
17 lesser included charges -- that's why we have to address this.
18 The State alleges here that the defendant is legally
19 responsible for the criminal action of Ivy Demolena and Thomas
20 Christopher James in violation of the law which reads in
21 pertinent part as follows.

22 "A person is guilty of an offense if it is committed
23 by his own action or the conduct of another person for which he
24 is legally accountable or both. A person is legally
25 accountable for the conduct of another person when..." -- I'm

1 going to use the feminine, she, because the defendant is female
2 -- "A person is legally accountable for the conduct of another
3 person when she is an accomplice of such other person or
4 persons in the commission of a -- of an offense. A person is
5 an accomplice of another person in the commission of an offense
6 if with the purpose of promoting or facilitating the commission
7 of the offense she aids or agrees or attempts to aid such other
8 person or persons in planning or committing it."

9 Now this provision of the law means that only -- that
10 not only is the person who actually committed the criminal act
11 responsible for it, but one who is legally accountable as an
12 accomplice is also responsible. Now this responsibility as an
13 accomplice may be equal and the same as he or she who actually
14 committed the crime or there may be responsibility in a
15 different degree depending on the circumstances as to what --
16 as to -- as you may find them to be, these circumstances. I'll
17 further explain that distinction in a moment.

18 Now in this case the State alleges that the defendant
19 is equally -- equally guilty of the crimes committed by Ivy
20 Demolena and Thomas Christopher James because she acted as his
21 or her or their accomplice with the purpose that the specific
22 crimes charged by committed. In order to find the defendant
23 guilty of the specific crime charged the State must prove
24 beyond a reasonable doubt each -- reasonable doubt each of the
25 following elements. First that Ivy Demolena and/or Thomas

1 Christopher committed the crimes of -- and then there's the
2 different crimes -- kidnapping of Mr. Hippman and -- and Mr.
3 James Polites, armed robbery of Hippman and Polites, and the
4 murder of Polites, and also the possession of the firearms for
5 unlawful purposes and that they had these fire -- handguns
6 without a permit. So the State's contention is the Demolena
7 and Christopher James committed these crimes and they have to
8 prove that beyond a reasonable doubt. And I've explained those
9 crimes to you.

10 The second -- the second element that the State must
11 prove under an accomplice liability theory is that this
12 defendant aided or did aid or agreed to aid him or her or them
13 in planning or committing the crime, and each of these crimes
14 are considered separately.

15 The third element that the State must prove beyond a
16 reasonable doubt on accomplice liability theory is that the
17 defendant's purpose was to promote or facilitate the commission
18 of the offense or offenses.

19 And fourth, the State must prove beyond a reasonable
20 doubt under an accomplice liability posture that this defendant
21 possessed a criminal state of mind that is required to be
22 proved against the person who actually committed the criminal
23 act. Each -- each crime is again separate. Same state of mind,
24 she possessed a criminal mind -- state of mind that is required
25 to be proved against the person who actually committed the

1 crime.

2 Now remember that one acts purposely with respect to
3 his or her conduct or the result thereof if it is her conscious
4 object to engage in conduct of that nature or to cause such a
5 result. Now aid, what do we mean when we aid someone? Aid
6 means to assist -- assist, to support or supplement the efforts
7 of another. And if there's an agreement to aid it means to
8 encourage by promise or assistance or support. Now if you find
9 that Ms. Farthing with the purpose of promoting or facilitating
10 the commission of the offense or offenses aided or agreed or
11 attempted to aid Demolena and/or Christopher James in planning
12 or committing the crime or crimes then you should consider her
13 as if she committed the crimes herself.

14 Now to prove the defendant's criminal liability the
15 State does not have to prove her -- her accomplice status by
16 direct evidence of a formal plan to commit a crime. There does
17 not have to be verbal agreement by all who are charged, the
18 proof may be circumstantial participation. An agreement can be
19 established from conduct as well as spoken words. Mere
20 presence at or near the scene does not make one a participant
21 in the crime nor does the failure of a spectator to interfere
22 make her a participant in the crime. That is, mere presence is
23 however a circumstance to be considered with the other evidence
24 in determining whether she was present as an accomplice. A
25 presence is not in itself conclusive evidence of that fact. To

1 constitute guilt there must exist a community of purpose and
2 actual participation in the crime committed. While mere
3 presence at the scene of the perpetration of a crime does not
4 render a person a participant in it, proof that one is present
5 at the scene of the commission of a crime or crimes without
6 disapproving or opposing it is evidence from which in
7 connection with other circumstances it is possible for the jury
8 to infer that she assented thereto, she lent to it her
9 countenance and approval and was thereby aiding the same. And
10 depending upon the -- it depends upon the totality of the
11 circumstances as those circumstances appear from the evidence.

12 Now an accomplice may be convicted on proof of the
13 commission of the -- of a crime or of her complicity therein
14 even though the person who it is -- who it is claimed committed
15 the crime has not been prosecuted or has been convicted of a
16 different offense or degree of offense or has an immunity from
17 prosecution or conviction or has been acquitted; it makes no
18 difference. Remember, that this defendant can be held to be an
19 accomplice with equal responsibility only if you find as a fact
20 that she possessed a criminal state of mind that is required to
21 be proved against the person who actually committed the
22 criminal act.

23 In order to convict the defendant as an accomplice to
24 the specific crime charged you must find that the defendant had
25 the purpose to participate in that particular crime. She must

1 act with the purpose of promoting or facilitating the
2 commission of the substantive crime with which she is charged.
3 It is not sufficient to prove only that the defendant had
4 knowledge that another person was going to commit the crime
5 charged. The State must prove that it was the defendant's
6 conscious object that the specific conduct charged be
7 committed.

8 In sum, in order to find this defendant guilty of
9 committing the crimes of murder or armed robbery, kidnapping,
10 possession of a handgun for an unlaw purpose the State must
11 prove each of the following elements beyond a reasonable doubt;
12 one, that Ivy Demolena and/or Thomas James committed the crimes
13 of murder, kidnapping and -- of the two victims, armed robbery
14 of the two victims, possession of the firearm with the -- with
15 -- for unlawful purposes and also possession without a permit.
16 So they have the prove that, the State, beyond a reasonable
17 doubt. They also have to prove that the defendant did aid or
18 agree to attempt to aid them in planning or committing each of
19 these crimes -- that is, planning and committing -- that she
20 agreed to aid them in planning the murder, that's the -- you
21 consider that separately, and also the -- the lesser included
22 offenses if necessary. They have to -- the State has to prove
23 that the defendant aided the -- Demolena and James in planning
24 or committing kidnapping, that she aided in the planning and
25 committing of a robbery, and that she aided in the planning and

1 the committing of possession of firearms for unlawful purposes.
2 The State has to further prove beyond a reasonable doubt that
3 this defendant's -- Ms. Farthing's purpose was to promote or
4 facilitate the commission of the offenses; you take them
5 separately again. That was, her purpose was to promote or
6 facilitate the commission of murder, that her purpose was to
7 promote of facilitate the commission of the crime of robbery,
8 of armed robbery, that her purpose and -- was to promote and
9 facilitate the commission of the crime of kidnapping and also
10 the possession of the firearm with unlawful -- for unlawful
11 purposes. And all the -- the lesser included offenses are also
12 included in those. If you find that they're not guilty of the
13 offenses of murder then you consider the lesser included
14 offenses, kidnapping, you consider the criminal restraint,
15 armed robbery, and then you consider robbery.

16 The fourth element that the State has to prove beyond
17 a reasonable doubt is that Ms. Farthing possessed the criminal
18 state of mind that is required to be proved against a person
19 who actually committed the criminal act.

20 If you find that the State has proven each one of the
21 elements as -- as described above beyond a reasonable doubt
22 then you must find the defendant guilty of the charges. Now on
23 the other hand, if you find that the State has failed to prove
24 one or more of these elements beyond a reasonable doubt then
25 you must find the defendant not guilty of a charge separately.

1 Now as I have previously instructed, any verdicts
2 rendered must be unanimous. All 12 jurors must agree as to the
3 guilt or the not guilt -- non guilt of the defendant. Now as I
4 have previously indicated you will initially consider whether
5 the defendant should be found not guilty or guilty of acting as
6 an accomplice of Ivy Demolena and/or Thomas Christopher James
7 with full and equal responsibility for the specific crimes
8 charged. Now if you find that the defendant -- you find the
9 defendant guilty of a specific charge or charges then you need
10 not consider any lesser included offenses. If however, you
11 find the defendant not guilty of acting as an accomplice of Ivy
12 Demolena and/or Thomas James on a specific crime charged then
13 you should consider whether the defendant did act as a
14 accomplice of Ivy Demolena and Thomas Christopher James but
15 with a purpose of promoting or facilitating the commission of
16 one of the lesser included offenses then the actual crime
17 charged in the indictment. You may find that the -- Ivy
18 Demolena and -- and/or Christopher James guilty of murder,
19 purposely and knowingly find them guilty of murder, but you may
20 not consider that this defendant had the same state of mind.
21 But you can, for the purpose of promoting -- but then you must
22 -- then you can consider or you should consider whether the
23 defendant acted as an accomplice of these two individuals but
24 for a purpose of promoting or facilitating the commission of a
25 lesser included offense which is aggravated manslaughter or

1 reckless manslaughter. And that goes also for kidnapping and --
2 and the criminal restraint. So, I'll read that again to you
3 and that's what that means, is that if -- if however, you find
4 the defendant not guilty of acting as an accomplice of Ivy
5 Demolena and Thomas James on a specific crime charged then you
6 should consider whether the defendant did act as an accomplice
7 of these two people but with the purpose of promoting or
8 facilitating the commission of a lesser offense than the actual
9 crime charged in the indictment. Now our law recognizes that
10 two or more persons may participate in the commission of an
11 offense but each may participate therein with a different state
12 of mind. The liability or responsibility of each participant
13 for any ensuing offense is dependent on his or her own state of
14 mind and not anyone else's.

15 Guided by these legal principles now, and if you have
16 found the defendant not guilty of the specific crime charged
17 you should then consider whether the defendant is guilty or not
18 guilty as an accomplice on the lesser charge which would be
19 aggravated manslaughter or reckless manslaughter, criminal
20 restraint or second degree robbery.

21 I will now explain -- and I -- I've explained those
22 elements to you before. Now in considering whether the
23 defendant is guilty or not guilty as an accomplice on these --
24 on a lesser included charge remember that each person who
25 participates in the commission of an offense may do so with a

1 different state of mind and the liability or responsibility of
2 each person is dependent on his or her own state of mind and no
3 one else's. So therefore, in order to find the defendant
4 guilty of the lesser included offense of aggravated
5 manslaughter, reckless manslaughter, criminal restraint or
6 second degree robbery under an accomplice liability theory the
7 State must prove beyond a reasonable doubt that Ivy Demolena
8 and/or Christopher James committed the crimes of murder, armed
9 robbery, kidnapping or they could also have been -- the State
10 could prove that they -- they committed beyond a reasonable
11 doubt aggravated manslaughter, criminal restraint or second
12 degree robbery as alleged. Now they -- I'm sorry, let me
13 strike that, I'll go over it. It does cover it here, I was
14 just trying to re -- restructure it.

15 The State must prove beyond a reasonable doubt one,
16 that Ivy Demolena and/or Thomas Christopher James committed the
17 crimes of murder, armed robbery, kidnapping -- or kidnapping as
18 alleged in the indictment for the lesser included -- or the
19 lesser included offenses of aggravated manslaughter, reckless
20 manslaughter, criminal restraint or robbery second degree.

21 Secondly the State must prove that this defendant,
22 Ms. Farthing, did aid or agree to attempt to aid them in
23 planning to commit the aggravated manslaughter or reckless
24 manslaughter, criminal restraint or robbery two.

25 Third, the State must prove that this defendant's

1 purpose was to promote or facilitate the commission of
2 aggravated manslaughter, reckless manslaughter, criminal
3 restraint or robbery two.

4 Again, everything is -- is separately considered.
5 You don't consider them that well, if it's aggravated
6 manslaughter then it has to be criminal restraint; no, they're
7 all separately different, they're all separately and different,
8 you consider them that way.

9 The fourth element the State must prove is that this
10 defendant possessed a criminal state of mind that is required
11 for the commission of aggravated manslaughter or reckless
12 manslaughter or criminal restraint or -- or robbery two --
13 robbery second degree.

14 Now if you find that the State has proven each one of
15 these elements beyond a reasonable doubt then you must find the
16 defendant guilty. If on the other hand you find that the State
17 has failed to prove one or more of these elements beyond a
18 reasonable doubt then you must find the defendant not guilty.
19 As I previously indicated, the verdict must be unanimous. All
20 12 jurors must agree as to guilt or not guilt.

21 All right, is the lunch here?

22 THE COURT OFFICER: I called the cafeteria, Your
23 Honor, about 15 minutes ago and they told me 15 minutes; it
24 should be here momentarily.

25 MS. BAGLIVI: Judge, can we approach sidebar?

1 THE COURT: Yeah.

2 (SIDEBAR)

3 MS. BAGLIVI: Judge, a couple of times when you were
4 talking about accomplice liability you said planning and
5 committing. Sometimes you said planning or committing, but a
6 couple -- quite a few times you said planning and committing
7 and I just want to make sure they understand it's or.

8 THE COURT: All right.

9 MS. BAGLIVI: And the other thing is you talk about
10 the accomplice of Thomas Christopher James and Ivy Demolena.
11 In my summation I said there were only five people there and he
12 turned up dead. I'm not -- I know she says that they did it,
13 but it could have been Beninio Rosario or it could have been
14 Efrim Popolayo as an accomplice to those other four.

15 THE COURT: Yeah, well all the evidence indicates
16 that they were (inaudible) other two guys were upstairs.

17 MS. BAGLIVI: I think if -- I mean I could go back
18 and check, but I'm sure that's what the statement is.

19 THE COURT: No, I'm not concerned with that. I don't
20 think they consider -- everything is -- the whole case is that
21 Ivy Demolena said --

22 MS. BAGLIVI: She planned it; yes, I agree with you
23 but --

24 THE COURT: (Inaudible)

25 MS. BAGLIVI: All right.

1 MR. WEICHSEL: Judge, I -- a couple of comments.
2 One, I think you want to again mention to the jury that it
3 should be done in the context of the entire charge. And I have
4 another concern and I've been kind of thinking and thinking
5 about it and thinking about it since the jury came back with
6 their question regarding Lieutenant Kane's testimony. And that
7 is, I would -- that defendant can't be convicted merely on her
8 own statement and apparently the only evidence regarding the
9 gun and (inaudible) -- has to be corroborated with evidence.

10 MS. BAGLIVI: And it was.

11 THE COURT: I'll tell them that.

12 MR. WEICHSEL: I think you have to -- I think you
13 have to tell the jury that.

14 MS. BAGLIVI: But I disagree because there was --

15 THE COURT: I'm not going to get into this right now.

16 MS. BAGLIVI: Okay.

17 (END OF SIDEBAR)

18 THE COURT: All right, it has been brought to my
19 attention that I had made reference to planning and committing
20 the crimes; it's -- it's planning or committing, it's all or.
21 It's as an accomplice in which she agrees -- for example,
22 agrees or attempts to agree to in planning or committing,
23 either one, in planning or committing it, that's what I have
24 written here, that's what I thought I said, but I've been told
25 that I possibly said planning and committing it, so it's

1 planning or committing it.

2 You are to take -- this particular also -- this
3 instruction that I have given you within the context of the
4 entire charge that I have given you.

5 I think the indicate your lunch should be ready, so
6 what I'll do is let you have lunch and we'll come back and then
7 we'll -- we'll have the read back for you. It will be put on
8 the T.V., you'll hear exactly what it is that was testified to
9 with regard to Mr. Kummer, all right, and then we'll have the
10 other ready too. All right, you can retire to your -- if you
11 want to use the men's rooms or ladies' rooms upstairs in the
12 hallway you can do that too because I know you're kind of
13 cramped in there with one bathroom if that's what you want to
14 do, but don't leave the building. All right, let them go out
15 and use the men's room in the hallway too. I'm going to call
16 you in about a half hour tell them, would you? About a half
17 hour and then I'll call you back in here, it's going to take
18 you a half hour.

19 (PAUSE - THE JURY LEAVES THE COURTROOM)

20 MR. WEICHSEL: I'll be back at the office, judge?

21 MS. BAGLIVI: Just be back in a half hour, right?

22 THE COURT: Yeah, 20 minute after one we're going to
23 have the read back, all right?

24 MS. BAGLIVI: Okay.

25 MR. WEICHSEL: Fair enough.

1 (RECESS)

2 THE COURT: Where were you, Mr. Weichsel?

3 MR. WEICHSEL: I'm sorry, judge. When you get back
4 to the office and the phone starts ringing and --

5 THE COURT: No, I understand that. We -- on the
6 record we are going to play back that portion of Lieutenant
7 Kane's testimony surrounding the -- the Edgewater crimes. And
8 then when we finish that we will then set forth the testimony
9 of Mr. Kummer and that's it on the tape. And we're all set for
10 that?

11 MR. WEICHSEL: Judge, would you -- since I don't
12 think you instructed the jury initially, in your initial
13 charge, I've been thinking about it; would you instruct the
14 jury that there has to be corroboration of defendant's
15 statement?

16 MS. BAGLIVI: Judge, I -- I disagree. I brought up
17 case law because Mr. Weichsel brought this up earlier this
18 morning. The issue of corroboration is a matter of law for the
19 court to decide. And if the court had decided that there was
20 nothing to corroborate the defendant's testimony --

21 THE COURT: Let me see the law please.

22 MS. BAGLIVI: Sure. I have State versus Boyer
23 (phonetic), State versus Frisco (phonetic), and State versus
24 Kreeger (phonetic). And Kreeger is the case that resolved the
25 split in the Appellate Division, that's a Supreme Court case.

1 THE COURT: Are you familiar with Kreeger?

2 MR. WEICHSEL: No, judge. Judge, the corroboration
3 is as to one issue and one issue only because that's what the
4 jury is focusing on this, whether there was a gun used in -- in
5 -- in the -- in the Polites crime. And, judge, unless I'm
6 incorrect, the only evidence regarding the fact of handguns in
7 Edgewater comes from this -- this defendant's statement, judge.
8 Unlike the Hippman crime in Hackensack where Hippman testified
9 there was a gun being used, the only evidence regarding a
10 weapon or handgun or -- or anything comes from -- from Jamie
11 Farthing.

12 MS. BAGLIVI: Judge, the law says that you do not
13 have to corroborate each and everything a defendant says in
14 their statement. The jury is not to get involved in the issue
15 of corroboration, that is an issue as a matter of law as the
16 cases say for the court to decide. The -- the cases say that
17 you only have to corroborate a statement just to show that it
18 is trustworthy. You do not have to corroborate each and every
19 single thing that she says in the statement, the law is clear
20 on that in the -- and in the Supreme Court Kreeger says that,
21 that corroboration -- I mean there were some issues in Kreeger
22 that talked about they didn't corroborate certain things that
23 happened during that case which was an arson case. And the
24 court held that you do not have to do that, that corroboration
25 is -- only goes to the -- is the statement trustworthy enough,

1 have enough things in there been corroborated. Additionally as
2 I said, corroboration is a matter of law and again Kreeger says
3 that, for the court to decide. If the court felt that the
4 statement alone at the end of the State's case was not
5 corroborated enough that there's no proof other than her own
6 statement that this crime was committed and she did it the
7 court would have dismissed it at the end of the State's case.
8 It does not require every single element and every single
9 statement of the defendant to be corroborated by evidence
10 because if that were the case then many times when you have
11 murder cases with only one person involved you -- you would
12 have no corroboration of the defendant's statement because the
13 only other person there is dead, and that is not what the law
14 requires.

15 MR. WEICHSEL: Judge, it seems to me that this
16 question of a gun is a key element in the case and -- and in
17 the minds of the jury. And I think the jury can be instructed
18 that -- that as to that that -- that there is no corroboration.

19 THE COURT: The issue really isn't the corroboration
20 of a statement, the issue is the trustworthiness of the
21 statement itself which has been presented to the jury already
22 by the court. And then of course in Kreeger they mention that
23 the -- taking a portion of State versus Johnson and State
24 versus Gill (phonetic), these are 1960 cases and one that goes
25 back to 1828. The reason for the rule is to avoid the danger

1 of convicting a defendant solely out of his or her mouth of a
2 crime that never occurred or a crime committed. And to ask the
3 jury that -- or to tell the jury at this time that one must --
4 anything that is said on this confession now that they're going
5 to hear has to be corroborated -- that's what you're asking me
6 to say, is that correct, with other evidence?

7 MR. WEICHSEL: No, I -- judge I -- it's actually to
8 the issue of the gun which is really a key issue here; was
9 there a gun there. I mean it hasn't been corroborated, judge;
10 there's no other evidence regarding it.

11 THE COURT: There's no other evidence about a lot of
12 things that happened in Edgewater except the confession of the
13 defendant.

14 MR. WEICHSEL: That's right, judge, and --

15 THE COURT: So how are we going to corroborate all of
16 those other things? There was a gun found.

17 MR. WEICHSEL: There was a gun found in the Crossbay
18 Motel.

19 THE COURT: Yes, there were guns found, there was
20 evidence that a gun was used the day before, there's evidence
21 that this defendant used a gun; this is all supportive evidence
22 distinct and separate that the jury could infer that a gun was
23 also at this place. Evidence of both crimes -- items taken
24 from both Hippman and Polites were found together when
25 everything was discovered, so there's all connected -- there's

1 enough support there that a statement -- I'm -- I agree with
2 the prosecution. The -- a statement to the jury now asking
3 them that they have to corroborate everything may be sending
4 them to a -- into an area that would be very confusing and mis
5 -- and misdirected. There's enough support here of the
6 evidence that's been presented by the State that the
7 defendant's statement as that there was a gun there and
8 everything else indicates there was a gun. They have found two
9 guns. There is testimony that at Hippman's they used guns. And
10 they found -- they found the guns in the luggage of the co-
11 defendants. So you -- you're -- under no circumstances, I'm
12 not going to -- your request is denied.

13 Now bring up the jury please.

14 (PAUSE - THE JURY ENTERS THE COURTROOM)

15 THE COURT: Pull the chair back so you can see there;
16 you want to see the monitor

17 MR. WEICHSEL: Judge, can I bring my chair out?

18 MS. BAGLIVI: Can you turn this around to the jury.

19 THE COURT: There's one over here, Mr. Weichsel;
20 leave it there, take this one.

21 MR. WEICHSEL: Okay, sorry.

22 THE COURT: Mr. Weichsel, you can bring that chair
23 down if you want.

24 All right, ladies and gentlemen, I'm going to -- we
25 have the tapes ready for a review of Lieutenant Kane's

1 testimony surrounding the Edgewater crimes. The -- the portion
2 of that tape which we reviewed, if you recall when he gave the
3 testimony and he read the statement, if I'm correct, read the
4 statement of the defendant, the alleged statement of the
5 defendant. There was a portion -- we took a break and we broke
6 between the -- the colloquy as to the Hackensack crimes. We
7 took a break and came back and I have it starting just as we
8 started the break. And then we came back and then he continued
9 reading through the statement with regard to the Edgewater, all
10 right? When we finish that we then will go into the testimony
11 of Mr. Kummer. Now Mr. Kummer's testimony as we estimate is
12 about an hour, so we have that -- you want cross examination
13 and redirect. So we have that much time to stay here; so just
14 get yourselves set for that. But we'll first do the Lieutenant
15 Kane's. Now my court clerk says that she needs about 30
16 seconds to get this set.

17 (OFF THE RECORD/ON THE RECORD)

18 MR. WEICHSEL: My client tells me when she went back
19 to the jail yesterday at I guess 4:30, quarter to five,
20 whatever time it was, someone had told the people at her part
21 of the jail that -- that she was suicidal and they put her on
22 suicide watch and they gave her -- what was that, a paper gown,
23 Jamie? A paper gown that she had to wear all last night and
24 she froze and she's wondering if it would be possible for her
25 to go back to the jail now before the people in charge leave at

1 4:00 because she says like I'm not suicidal, I'm not going to
2 kill myself, I don't know why they did this and I had a
3 horrible night, I didn't sleep all night because I -- I froze.

4 THE COURT: The answer is no, she can't go back to
5 the jail now, she has to be on deck. If you want to make a
6 call over there and find out yourself you can. I have no
7 control over the jail, I told you that before. You can call
8 over there, Mr. Weichsel, and find out what's going on, okay?

9 MR. WEICHSEL: Okay, thank you.

10 (OFF THE RECORD/ON THE RECORD)

11 THE COURT: All right, please be seated.

12 MR. WEICHSEL: Judge, can I have a -- if you have
13 some extra verdict sheets can I have two, one for me and one
14 for my client?

15 THE COURT: Yeah, I have them. Ms. Baglivi, you have
16 a verdict sheet?

17 MS. BAGLIVI: I have one, thank you, judge.

18 MR. WEICHSEL: Thank you.

19 THE COURT: I understand we have reached a verdict.
20 Bring up the jury please? Bring in the alternates?

21 THE COURT OFFICER: Yes, Your Honor.

22 (PAUSE - THE JURY ENTERS THE COURTROOM)

23 THE COURT: All right, ladies and gentlemen of the
24 jury, I understand a note I received that you have reached a
25 verdict, is that correct?

1 THE FOREPERSON: Yes, it is.

2 THE COURT: Ms. Foreperson, will you please stand?

3 Now the verdict that you have reached is on all charges; charge
4 one, two, three, four, five, six, seven, eight, nine and ten
5 and 11, is that correct?

6 THE FOREPERSON: Yes, Your Honor.

7 THE COURT: Are all of the verdict unanimous?

8 THE FOREPERSON: Yes.

9 THE COURT: All right, as to the questions. How do
10 you find as to the charge that, "Jamie Farthing on August 4,
11 1994 did kidnap Robert Hippman, not guilty or guilty?"

12 THE FOREPERSON: Guilty, Your Honor.

13 THE COURT: You did not -- oh, then you were asked to
14 consider the next question if it was found guilty, you
15 considered the next question?

16 THE FOREPERSON: Yes, we did.

17 THE COURT: All right, "1-A, did Jamie Farthing
18 release the victim, Robert Hippman, unharmed prior to her
19 apprehension, yes or no?"

20 THE FOREPERSON: No.

21 THE COURT: Next question, "Did Jamie Farthing
22 release the victim, Robert Hippman, in a safe place prior to
23 her apprehension, yes or no?"

24 THE FOREPERSON: No.

25 THE COURT: Question 1-C you did not answer, is that

1 correct?

2 THE FOREPERSON: That's correct.

3 THE COURT: Charge number two, "How do you find as to
4 the charge that Jamie Farthing on August 4, 1994 while in the
5 course of committing a theft did use force upon Robert Hippman,
6 not guilty or guilty?"

7 THE FOREPERSON: Guilty.

8 THE COURT: If you found the defendant guilty of
9 robbery then you were to answer the next question. "During the
10 course of the robbery was she armed with a deadly weapon, yes
11 or no?"

12 THE FOREPERSON: Yes.

13 THE COURT: Charge three, "How do you find as to the
14 charge that Jamie Farthing on August 4, 1994 did knowingly and
15 unlawfully possess certain weapons to wit a 32 caliber revolver
16 and a Rossi 38 caliber revolver with the purpose to use it
17 unlawfully against the person or property of another, not
18 guilty or guilty?"

19 THE FOREPERSON: Guilty.

20 THE COURT: Count -- charge four, "How do you find as
21 to the charge that Jamie Farthing on August 4, 1994 did
22 knowingly and unlawfully possess certain weapons, namely an H&R
23 32 caliber revolver and a Rossi 38 caliber revolver without
24 having obtained a permit to carry same, not guilty or guilty?"

25 THE FOREPERSON: Guilty.

1 THE COURT: Charge number five, "How do you find as
2 to the charge that Jamie Farthing did commit murder, that is
3 that she did purposely or knowingly cause the death or serious
4 bodily injury resulting in the death of James Polites on August
5 5, 1994, not guilty or guilty?"

6 THE FOREPERSON: Guilty.

7 THE COURT: You did not answer six and --

8 THE FOREPERSON: Six, or 5-A or 5-B.

9 THE COURT: I'm sorry, 5-A or 5-B, you did not answer
10 that? You proceeded to charge six.

11 Charge six, "How do you find as to the charge that
12 Jamie Farthing while in the course of committing the crime of
13 kidnapping she or another person did cause the death of James
14 Polites on August 5, 1994, not guilty or guilty?"

15 THE FOREPERSON: Guilty.

16 THE COURT: Charge number seven, "How do you find as
17 to the charge that Jamie Farthing while in the course of
18 committing the crime of robbery she or another person did cause
19 the death of James Polites on August 5, 1994, not guilty or
20 guilty?"

21 THE FOREPERSON: Guilty.

22 THE COURT: Charge five.

23 THE FOREPERSON: Eight.

24 THE COURT: I'm sorry, charge eight. "How do you
25 find as to the charge that Jamie Farthing on August 5, 1994 did

1 kidnap James Polites, not guilty or guilty?"

2 THE FOREPERSON: Guilty.

3 THE COURT: Question number 8-A, "Did the defendant,
4 Jamie Farthing, release the victim James Polites unharmed prior
5 to her apprehension, yes or no?"

6 THE FOREPERSON: No.

7 THE COURT: Question 8-B, "Did Jamie Farthing release
8 the victim, James Polites, in a safe place prior to her
9 apprehension, yes or no?"

10 THE FOREPERSON: No.

11 THE COURT: You did not consider 8-C. Charge nine,
12 "How do you find as to the charge that Jamie Farthing on August
13 5, 1994 while in the course of committing a theft did use force
14 upon James Polites, not guilty or guilty?"

15 THE FOREPERSON: Guilty.

16 THE COURT: "During the course of the robbery was she
17 armed with a deadly weapon, yes or no?"

18 THE FOREPERSON: Yes.

19 THE COURT: Charge ten, "How do you find as to the
20 charge that Jamie Farthing on August 5, 1994 did knowingly and
21 unlawfully possess certain weapons to wit a 32 caliber revolver
22 and a Rossi 38 caliber revolver with the purpose to use it
23 unlawfully against the person of another, not guilty or
24 guilty?"

25 THE FOREPERSON: Guilty.

1 THE COURT: Charge 11, "How do you find as to the
2 charge that Jamie Farthing on August 5, 1994 did knowingly and
3 unlawfully possess certain weapons, the 32 caliber revolver and
4 the Rossi 38 caliber revolver without having a permit to carry
5 same, not guilty or guilty?"

6 THE FOREPERSON: Guilty.

7 THE COURT: Mr. Weichsel?

8 MR. WEICHSEL: Judge, I'd ask that the jury be
9 polled, Your Honor.

10 THE COURT: All right, ladies and gentlemen of the
11 jury, I want you to answer yes to my question. Now we're going
12 to take a roll, it's called polling the jury.

13 On the first count, charge one, if you agree with the
14 verdict that Jamie Farthing did kidnap Robert Hippman and did
15 not -- did not release him unharmed prior to her apprehension
16 or in a safe place prior to her apprehension, please answer yes
17 if you agree with that verdict.

18 (ALL JURORS ANSWER YES)

19 THE COURT: As to the count, count two, if you agree
20 with the verdict that she is guilty -- that Jamie
21 Farthing is guilty of robbery, armed robbery or robbery while
22 armed with a deadly weapon, if you verdict was guilty say yes
23 when your name is called.

24 (ALL JURORS ANSWER YES)

25 THE COURT: If you agree with charge three and four,

1 that is that Jamie Farthing possessed those two handguns with
2 the purpose to use them unlawfully against the person of
3 another and did not have a permit to carry same, if you agree
4 that she's guilty of those two charges please say yes when your
5 name is called.

6 (ALL JURORS ANSWER YES)

7 THE COURT: Do you agree with the verdict on charge
8 number five that Jamie Farthing did commit murder, that is she
9 purposely or knowingly caused the death or serious bodily
10 injury resulting in the death of James Polites on August 5,
11 1994 as guilty of that charge, please say yes when your name is
12 called.

13 (ALL JURORS ANSWER YES)

14 THE COURT: As to the charge that Jamie Farthing did
15 in the course of committing the crime of kidnapping, she or
16 another did cause the death of James Polites on August 5, 1994,
17 guilty of that charge, if you agree with that please answer yes
18 when your name is called.

19 (ALL JURORS ANSWER YES)

20 THE COURT: Charge seven, if you agree that Jamie
21 Farthing while in the course of committing the crime of robbery
22 she or another person did cause the death of Jamie Polites on
23 August 5, 1994, if you agree that the charge -- that she's
24 guilty of that charge please answer when your name is called
25 yes.

1 (ALL JURORS ANSWER YES)

2 THE COURT: As to the kidnapping charge that Jamie
3 Farthing on August 5, 1994 did kidnap James Polites and did not
4 -- and did not release him unharmed prior to her apprehension
5 or in a safe place prior to her apprehension. If you agree
6 with the verdict of guilty to that charge please answer yes.

7 (ALL JURORS ANSWER YES)

8 THE COURT: Charge nine, if you agree that the
9 defendant is guilty of robbery in that she in the course of
10 committing a theft she used force upon James Polites on August
11 5, 1994 and she was armed with a deadly weapon. If you agree
12 with that verdict answer yes when your name is called please?

13 (ALL JURORS ANSWER YES)

14 THE COURT: All right, charges ten and 11, if you
15 find that the defendant is guilty of possessing certain
16 weapons, handguns, to use unlawfully against the person or
17 property of another and having no license -- or not permit to
18 carry same and you find that she's guilty of these two charges
19 please answer yes when your name is called.

20 (ALL JURORS ANSWER YES)

21 THE COURT: Anything else, Mr. Weichsel?

22 MR. WEICHSEL: No, Your Honor.

23 THE COURT: All right. I include the two alternates
24 in this remark, the remarks I have to make now. You have --
25 you must realize now the function that you have performed is

1 the most important task that you may ever be called upon to
2 fulfill. Now with the return of your verdict your services in
3 the case is complete. Now you came into this courtroom in the
4 beginning of November and I'm sure that you leave here a little
5 changed. You were invited into a world that you're not
6 familiar with and you were exposed to a world that you had to
7 make decisions about. You have done that nobly and you've done
8 that to a great credit to the citizens of Bergen County and the
9 State of New Jersey.

10 Of course the key to your function has been the free
11 discussion among yourselves during your deliberations. It is
12 essential to the continuation of fair administration of justice
13 that those discussions remain solely within your minds. Upon
14 your discharge you are not required except upon order of this
15 court to discuss your deliberations or your verdict with
16 anyone. Additionally no person connected with this trial is
17 permitted under the rules of the court to engage you in
18 conversation about the matter or your role in its outcome. All
19 jurors have a right to expect that their communications with
20 their fellow jurors during deliberations will remain
21 confidential. It is in the public interest that there be the
22 utmost freedom of discussion in the jury room and that each
23 juror be permitted to express his or her views without fear of
24 incurring public scorn or the anger of any of the litigants.
25 Under no circumstances should you make a statement which you

1 would not be willing to repeat under oath in open court in the
2 presence of your fellow jurors.

3 Now on behalf of the State of New Jersey, as I
4 mentioned to you earlier, I -- we recognize certainly that your
5 period of stay with us at the courthouse complex has entailed
6 some sacrifice on your part, in your case a great deal of
7 sacrifice. But we trust that you leave here appreciative of
8 the fact that you have made a meaningful contribution to the
9 judicial system and we hope that you have profited by the
10 experience and that you have gained. On behalf of the County
11 of Bergen I want to thank you for the services that you
12 rendered to our judicial system as judges of the facts in this
13 case. It's been a pleasure and an honor to work with you. You
14 are now dismissed.

15 (THE JURY IS DISMISSED AND LEAVES THE COURTROOM)

16 THE COURT: Is there any bail problem in this?

17 MS. BAGLIVI: Judge, the bail is \$1 million. It
18 seems ridiculous because she's going to go to New York as a
19 detainer, but I would just ask that you revoke it.

20 MR. WEICHSEL: Judge, it's academic. I mean she
21 can't --

22 THE COURT: Well bail is revoked and sentencing, Ms.
23 Farthing, is -- will you please stand? Your sentencing date is
24 set for February 7, 1997.

25 MS. BAGLIVI: I'm sorry, 7th?

1 THE COURT: February 7th 1997.

2 MS. BAGLIVI: Thank you, Your Honor.

3 THE COURT: Thank you.

4 MS. BAGLIVI: May we leave the evidence locked in the
5 holding cell and then tomorrow morning I'll be over first thing
6 to go through it and make sure it's all there?

7 THE COURT: Is there any problem with locking it in
8 the holding cell?

9 MR. WEICHSEL: I have no objection.

10 THE COURT: Well I'm not concerned about your
11 objection so much as evidence being lost and I don't want the
12 court to take that responsibility if it can help it. We have
13 the key to the holding cell?

14 THE COURT OFFICER: Yes, sir.

15 THE COURT: All right, we -- we did that last night?
16 We can do it tomorrow and then you will be available to let
17 them in?

18 THE COURT OFFICER: Yes, we'll be here tomorrow.

19 MS. BAGLIVI: We'll be up first thing in the morning
20 to go through it.

21 THE COURT: Okay, thank you, this court is adjourned.

22 MS. BAGLIVI: Thank you.

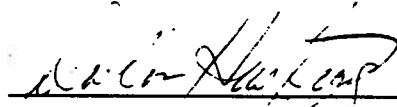
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CERTIFICATION

I, Dolores Hastings, the assigned transcriber, do hereby certify the foregoing transcript of proceedings in the Bergen County Superior Court, Law Division, Criminal Part, on November 26, 1996, on tape number 192-96, index number from 00:00:00 to 01:48:46, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.



Dolores Hastings

417

AOC Number

KEMCO TRANS, INC.

Agency Name

7/4/97

Date